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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,021	06/24/2003	Himanshu Brahmbhatt	060348-0104	7643
22428	7590	05/04/2006		
FOLEY AND LARDNER LLP				EXAMINER
SUITE 500				LANKFORD JR, LEON B
3000 K STREET NW				ART UNIT
WASHINGTON, DC 20007				PAPER NUMBER
				1651

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/602,021	BRAHMBHATT ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Leon Lankford	1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 February 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-12 and 26-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 9-12 and 26-40 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of group II in the reply is acknowledged.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-12 and 26-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant fails to set forth the metes and bounds of the critical step "subjecting... to a condition that induces parent bacterial cells to adopt a filamentous form" and as such fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is also unclear what exact conditions are covered by this limitation and as such the scope of the claims is not defined. It is also unclear when and to what the "condition" is to be applied. On page 10 of the instant specification, applicant better defines the process and it is suggested that applicant make it clear what the "subjecting" does and how that facilitates filtering.

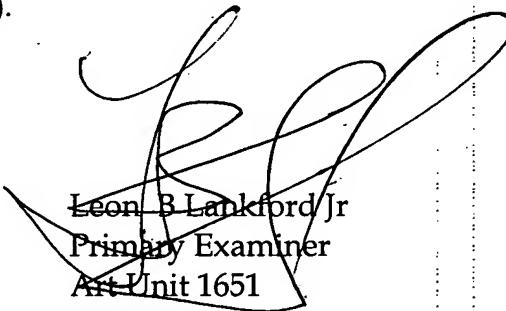
The limitation "parent bacterial cells" renders the claims indefinite because the scope of this limitation is unclear.

Please note that the language of a claim must make it clear what subject matter the claim encompasses to adequately delineate its "metes and bounds". See, e.g., the following decisions: *In re Hammack*, 427 F 2d. 1378, 1382, 166 USPQ 204, 208 (CCPA 1970); *In re Venezia* 530 F 2d. 956, 958, 189 USPQ 149, 151 (CCPA 1976); *In re Goffe*, 526 F 2d. 1393, 1397, 188 USPQ 131, 135 (CCPA 1975); *In re Watson*, 517 F 2d. 465, 477, 186 USPQ 11, 20 (CCPA 1975); *In re Knowlton* 481 F 2d. 1357, 1366, 178 USPQ 486, 492 (CCPA 1973). The courts have also indicated that before claimed subject matter can properly be compared to the prior art, it is essential to know what the claims do in fact cover. See, e.g., the following decisions: *In re Steele*, 305 F 2d. 859, 134 USPQ 292 (CCPA 1962); *In re Moore* 439 F 2d. 1232, 169 USPQ 236 (CCPA 1969); *In re Merat*, 519 F 2d. 1390, 186 USPQ 471 (CCPA 1975).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leon Lankford whose telephone number is 571-272-0917. The examiner can normally be reached on Mon-Thu 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leon B Lankford Jr  
Primary Examiner  
Art Unit 1651